


**MEMORANDUM**

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 36-07, Development Districts – Amendments

Bill 36-07, Development Districts – Amendments, sponsored by Councilmember Trachtenberg and Council President Praisner, is scheduled to be introduced on December 4, 2007. A public hearing is tentatively scheduled for January 15 at 7:30 p.m., along with a resolution introduced by Councilmember Knapp to terminate the Clarksburg Town Center Development District.

Bill 36-07 would revise the County development district law as recommended by Council staff in Chapter 9 of our September report on *Implementation of the Development District Act*. Specifically, Bill 36-07 would:

- clarify the definition of infrastructure improvement to remove the ambiguity about whether a development district can consist of a single development;
- expressly require a petition to create a development district to specify its proposed boundaries;
- allow the Executive to require applicants to pay a filing fee, set by regulation, to cover the Executive's costs incurred in reviewing a proposed development district;
- clarify that the Executive can recommend that the district finance infrastructure items not listed by the Planning Board in its provisional adequate public facilities approval (PAPF);
- further specify how notice of the hearing on the second Council resolution must be given;
- expressly allow the Council to amend a second resolution after the same notice and hearing as required to originally adopt the resolution;
- clarify that "fully developed" property does not include property developed by the applicant for a development district or its successors;
- repeal the credit of development district taxes against the impact tax; and
- strengthen the disclosure required for buyers and potential buyers of property in a development district or potential development district, allow persons who suffer losses because required information was not disclosed to recover damages, and authorize the County Office of Consumer Protection to enforce the disclosure requirements.

Council staff will draft an amendment after this bill is introduced to reflect one additional staff recommendation: clear procedures should be available for petitioners to amend a petition to create a development district before the Council acts on it.

In addition, Councilmember Trachtenberg, lead sponsor of this bill, expects to discuss the following issues when this bill comes before the Management and Fiscal Policy Committee:

- Should the law require the County Executive and Planning Board to act on development district petitions within certain time limits?
- Should the law allow or require the Executive to start collecting the development district tax as soon as the second Council resolution passes, even before bonds are sold?
- Should the law allow or require the Executive to issue development district bonds in a series of partial issuances, as infrastructure is built?
- Should the Council direct the Executive, by law or appropriation, to create a project coordinator for each development district and/or an overall Development Districts Director in the Executive's office to coordinate County action on each district?

This packet contains

Bill 36-07

Legislative Request Report

Circle

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Bill No. 36-07  
Concerning: Development Districts -  
Amendments  
Revised: 11-30-07 Draft No. 1  
Introduced: December 4, 2007  
Expires: June 4, 2009  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Trachtenberg and Council President Praisner

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**AN ACT** to revise the County development district law.

By amending  
Montgomery County Code  
Chapter 14, Development Districts

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Chapter 14 is amended as follows:**

**14-3. Definitions.**

In this Chapter the following words have the following meanings:

\* \* \*

(g) Infrastructure Improvement means a school, police station, fire station, library, civic or government center, storm drainage system, sewer, water system, road, bridge, culvert, tunnel, street, transit facility or system, sidewalk, lighting, park, recreational facility, or any similar public facility, and the land where it is or will be located. [Infrastructure Improvement does not include any improvement which:

- (1) primarily serves the residents or occupants of only one development or subdivision; or
- (2) is the responsibility of a single developer under the Planning Board's site plan and adequate public facilities requirements.]

\* \* \*

**14-6. First Council Resolution.**

(a) If a petition signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property, as shown by the latest assessment rolls, located in a proposed development district, is filed with the County Council, the Council must hold a public hearing after at least 15 days notice in two newspapers of general circulation in the County. The petition must specify the boundaries of the proposed district and list the maximum number of housing units and the maximum nonresidential space that the signing property owners intend to build in the district.

\* \* \*

(g) After the Council has adopted a resolution under Section 14-6, the

Executive may require any applicant for provisional adequate public facilities approval under Section 14-7 to pay one or more filing fees, in amounts and installments set by Executive regulation, to cover all costs of:

- (1) Executive review of the proposed district;
- (2) preparation of the fiscal report required under Section 14-8; and
- (3) preparation of any bond issue or other financing after the district is created.

**14-8. Executive Fiscal Report.**

(a) After the Planning Board has acted under Section 14-7(b) but before the Council holds a public hearing under Section 14-9(a), unless otherwise provided in the resolution adopted under Section 14-6, the [County] Executive, after consulting the Superintendent of Schools with respect to school facilities and the Washington Suburban Sanitary Commission with respect to water and sewer facilities, must submit a report estimating:

- (1) the cost of each infrastructure improvement listed by the Planning Board under Section 14-7(c) or recommended by the Executive under subsection (b); and
- (2) (A) the amount of revenue needed to [cover the district's share of] finance all infrastructure improvements funded, fully or partly, by a district; and
- (B) the [estimated tax] rate for each [form of taxation] tax, assessment, fee, or charge available to the district that would produce the necessary revenue.

The Executive should compare these estimates to those submitted by the applicants under Section 14-7(a).

- (b) In this report the Executive should also recommend whether to create a district, its boundaries if one is created, which eligible infrastructure improvements listed by the Planning Board or otherwise the district should fully or partly fund, and alternative financing or revenue-raising measures.

**14-9. Second Council Resolution.**

- (a) The Council must hold a public hearing on the final resolution to create a development district not earlier than 45 days after the Planning Board has acted on all applications filed under Section 14-7 for that district.
- (b) (1) The Council must give notice of the hearing by:
- (A) advertisement in at least two newspapers of general circulation in the County at least 21 days before the hearing; and
  - (B) notifying by first-class mail the record owner of each property located in the proposed district at the address shown on the [latest] most recent tax assessment [roll] records available from the State Department of Assessments and Taxation or any successor agency. The Council must retain sufficient proof that each required notice was mailed. However, the failure of any property owner to receive notice by mail does not invalidate the adoption of a resolution under this Section or any later action by the Council or Executive.
- (2) Each notice mailed under this subsection must include:
- (A) a copy of the proposed resolution to establish a district; and
  - (B) an estimated rate for any tax, assessment, fee, or charge

proposed to fund infrastructure improvements for the district.

\* \* \*

(g) The Council may amend a resolution adopted under this Section after giving notice as required by subsection (b), including notice by mail to each property owner in the district. An amended resolution requires Executive approval or Council readoption as provided in subsection (d).

#### 14-10. Special Taxes and Assessments.

\* \* \*

(b) The resolution must provide, except when clearly inconsistent with state law, that:

- (1) any property which is fully developed before the development district is created is exempt from any special assessment, special tax, fee, or charge imposed under this Chapter; and
- (2) the owner of any property exempt from payment under paragraph (1) which is later developed more intensively and benefits from any development capacity attributable to infrastructure improvements financed by the district must pay any tax, fee, or charge that it would have otherwise paid under this Chapter.

In this subsection, "fully developed" property does not include any property developed after the Council adopted a resolution under Section 14-6 by any property owner who signed a petition under subsection 14-6(a) or that owner's successor in interest.

\* \* \*

[(e) The total amount of any development district special tax, special assessment, fee, or charge paid under this Chapter must be credited against:

- 109 (1) the development impact tax and construction excise tax imposed  
 110 under Chapter 52, as applicable; and
- 111 (2) any other charge, fee or tax listed in the resolution adopted under  
 112 Section 14-9 (including any front foot benefit charge, assessment,  
 113 or tax imposed on construction) which is imposed by the County  
 114 expressly to finance the costs of infrastructure improvements  
 115 necessary to allow development.]

116 [(f)] (e) \* \* \*

117 **14-17. Disclosure; notices [to Buyers].**

- 118 (a) A [contract to sell] seller of real property located in a development  
 119 district must disclose to [the initial buyer, and] any [later] buyer during  
 120 the life of any [special assessment, special tax, fee, or charge  
 121 authorized] development district created under this Chapter[.];

- 122 (1) the amount of any special assessment, special tax, fee, or charge  
 123 which the buyer must pay; or
- 124 (2) if that amount cannot readily be determined, a method of  
 125 calculating the amount in sufficient detail to allow the buyer to  
 126 estimate the maximum amount the buyer will pay currently and  
 127 during the life of the district.

128 This disclosure must be made in any sale or lot reservation contract.

- 129 (b) The seller of any property located in a development district or proposed  
 130 development district must specify in any advertisement, sales brochure,  
 131 sign, or other sales material that the seller creates or authorizes that:

- 132 (1) the property is or would be located in a development district; and  
 133 (2) any potential buyer should ask the seller about the additional  
 134 taxes and other charges that a property owner in the district may  
 135 be liable for.



Each sales office and model home in a new housing development located in a development district must prominently display at least one sign that contains the information required under this subsection. [Any contract which does not disclose all items required by this Section is voidable at the option of the buyer before the date of settlement.]

[(b)] (c) A notice in a contract of sale or similar document which contains the heading "Notice of Special Tax or Assessment" in at least 14-point type and substantially conforms to the following text complies with [this Section] subsection (a):

Each year the buyer of this property must pay a special assessment or special tax imposed under Chapter 14 of the Montgomery County Code, in addition to all other taxes and assessments that are due. As of (date of this contract [of sale]), the special assessment or special tax on this property amounts to (dollar amount in arabic numbers) each year. As of (date of each scheduled increase), the assessment or tax is scheduled to increase to (amount of each scheduled increase). For further information on this assessment or tax, the buyer can contact the County Department of Finance at (current telephone number).

If an increase in any special assessment, special tax, fee, or charge is likely to occur in the foreseeable future but the timing or amount of the increase is not certain when the contract is signed, the notice must also expressly disclose that fact.

[(c)] (d) [Before any bonds are issued under this Chapter] Promptly after the Council adopts a resolution under Section 14-9, the Director of Finance must record among the land records of the County at the cost of the development district a declaration encumbering all real property located

in the district and designating that property as subject to a development district. The declaration must terminate when the Director records a release stating that all bonds are fully repaid and all other obligations of the district have been satisfied.

[(d)] (e) The Director of Finance must indicate on the real estate tax bill for each property in a development district the amount of any special assessment or special tax imposed on the property.

(f) Any notice or other information that this Section requires a seller to provide for a property located in a development district must also be provided if a development district has not been created but the property is located in an area proposed to be included in a development district by a petition filed under Section 14-6.

(g) Any contract which does not disclose all information required by this Section is voidable at the option of the buyer before the date of settlement.

(h) In addition to any other applicable remedy or penalty, any person who does not comply with this Section is liable for any damages sustained by a buyer or potential buyer because of that person's failure to provide any required notice or information.

(i) The Office of Consumer Protection must enforce this Section as if it were part of Chapter 11.

Approved:

Marilyn Praisner, President, County Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 36-07

### *Development Districts - Amendments*

**DESCRIPTION:** Revises the County development district law to respond to issues raised in the recent Council staff review of the law.

**PROBLEM:** Ambiguities in the current development district law, including insufficient notice to buyers of property in development districts.

**GOALS AND OBJECTIVES:** To improve the development district law by strengthening its notice provisions and resolving other ambiguities.

**COORDINATION:** Planning Board, Finance Department, Office of Management and Budget, Council staff

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905

**APPLICATION WITHIN MUNICIPALITIES:** Applies only to County development districts, which can include land in County municipalities.

**PENALTIES:** Class A violation